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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	LON/00BG/LSC/2013/0014
Property:	Capulet Square, Bromley-by-Bow, London E3
Applicants:	Stephen Everitt and others
Representative:	Stephen Everitt
Respondent:	Fairhold Artemis Limited
Representative:	Trinity (Estates) Management Limited
Type of application:	Liability to pay service charges
Date of hearing:	19, 20 and 21 August and 14 and 15 November 2013
Appearances:	Stephen Everitt, leaseholder, representing all the applicants Samuel Walker, solicitor, Trinity (Estates) Management Limited
Tribunal members:	Margaret Wilson P M Casey MRICS Rosemary Turner JP
Date of decision:	6 August 2014

DECISION

Introduction

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") for the determination of the applicant leaseholders' liability to pay service charges to the landlord, Fairhold Artemis Limited, from August 2005 to date. The lead applicant is Stephen Everitt, the leaseholder of Flat 34 Wealden House, and he represents some 62 other leaseholders of flats in Capulet Square. The landlord is represented in the proceedings by its managing agent, Trinity (Estates) Management Limited ("Trinity"). At the date of the application the service charge accounts for the year ended 31 December 2012 were not available but they were provided during the hearing on 14 November 2013 and it was agreed that the actual charges for that year should therefore be considered in this decision. The leaseholders' challenges therefore relate to the actual charges for the period from 12 August 2005 to 31 December 2012 and the estimated charges for the year 2013.

Background

2. Capulet Square is a development of 104 flats, arranged in four blocks, Padstone House, Shire House, Bailey House and Wealden House, sometimes referred to as blocks 1, 2, 3, and 4 respectively. The development was built between 2005 and 2006 by Berkeley Homes (South East London) Limited, at the time an associated company of the landlord. Padstone House, which comprises 24 flats, and Shire House, which comprises 12 flats, were completed and handed over to Trinity for it to assume the management on 12 August 2005. Bailey House and Wealden House are linked in an L-shape, and together they comprise 68 flats. They were completed and their management handed to Trinity on 2 February 2006. The four blocks are built around a central courtyard with a communal garden area. There is an entrance gate for pedestrians and two electrically operated gates for vehicles. There are two bin-store areas and two bicycle stores, a communal aerial satellite system and a communal pumped water system. The blocks have emergency lighting, entryphones, dry risers and automatic opening vents. Bailey House has one lift and Wealden House has two. Padstone House and Shire House do not have lifts. All the flats are held on 999 year leases which are in common form. Over 80% of the flats are not owner-occupied but are sublet.

3. The application, which incorporated a document box full of lever arch files, was made by Stephen Everitt, a leaseholder, on 2 January 2013. It was the subject of two pre-trial reviews: a second pre-trial review was required because, as appears from the directions dated 27 February 2013 made after the first pre-trial review, which Mr Everitt did not attend, the Tribunal could not properly understand or identify the issues in view of the complexity of the

application and the volume of documents in support of it. In pre-hearing directions made after the second pre-trial review on 30 April 2013 two preliminary issues were identified, namely (a) whether the budget or accounts for the year ended December 2006 were erroneously calculated and/or required adjustment by 365/507 of that charged, and whether or not this has consequences for the subsequent years' charges, and (b) whether charges made for water were miscalculated. Directions were made for the service of evidence and in response to them Mr Everitt saw fit to provide some 17 lever arch files in respect of what, in our judgement, was essentially a reasonably straightforward case. Three days, 19, 20 and 21 August, were allotted to the hearing but they proved insufficient and, in the end, the hearing had to be resumed on 14 and 15 November when it occupied a further one and a half days, followed by our inspection of the development which took place on the afternoon of 15 November in the presence of representatives of the parties. We inspected all parts of the development which any of the parties asked us to inspect. At the time of our inspection the development appeared to be well maintained.

4. At the conclusion of the first three days of the hearing we made directions that no later than 16 September 2013 Mr Everitt must provide to the landlord a written request for any further information he required together with any further written submissions he wished to make, which should not exceed five sides of A4 in length and should include a summary of matters now agreed and a list of those remaining in dispute, that no later than 30 September 2013 the landlord must provide to Mr Everitt such further information as he had reasonably requested and might if so advised by the same date respond to his written submissions, and that no later than 14 October 2013 Mr Everitt must provide one copy to the landlord and lodge four copies with the Tribunal of a bundle containing the documents directed, together with statements from any further witnesses on whose evidence he intended to rely, and that any further witnesses whose evidence was not agreed must attend the further hearing to give evidence. Mr Everitt did not comply with those directions and served and lodged no fewer than seven lengthy bundles of documents only two days before the resumed hearing. He served and lodged a summary of matters agreed and in dispute, which exceeded the length directed, late on the day before the resumed hearing.

5. At the hearing the applicant tenants were represented by Mr Everitt. In the course of the first three days of the hearing he called John Pender, the leaseholder of 13 Bailey House, Shehanaz Shamshudin, the leaseholder of 1 Wealden House, Tracey Seaman-Greenaway, the leaseholder of 9 Wealden House, Jordan Gaster, a sub-tenant of Flat 14 Wealden House, and Debbie Ford, the leaseholder of Flats 7 and 10 Wealden House, to give evidence. At the resumed hearing he called Khalid Mushtaq of Kilmers, a letting agent, to give evidence, and Hilary Quinn on behalf the freeholder attended the fourth day of the hearing at her own instigation. Mr Everitt had also submitted written statements from a number of leaseholders or sub-tenants who did not give oral evidence. While we would not normally attach weight to statements from persons who were not tendered for cross-examination, Mr Samuel Walker, a solicitor employed by Trinity, who represented the respondent,

agreed that we could attach some weight to such statements, which in any event broadly corroborated the evidence of the witnesses who gave oral evidence, and we have therefore taken the written statements into account.

6. Mr Walker called Geoff Purser FCA, Trinity's Estate Accounts Supervisor, Matthew Shaw, its Regional Estate Manager, and Ray Phelps AIRPM, its Estate Manager, to give evidence.

7. During the course of the hearing the parties agreed a number of matters and by the end of the hearing virtually all the figures given in the Scott Schedule prepared for the hearing were no longer valid. It was agreed that it would assist us in making our decision if the parties' final positions were to be set out in a revised Scott Schedule. On 16 November 2013 we made written directions, all the contents of which had been agreed by Mr Everitt and Mr Walker at the hearing, as follows:

> 1. No later than **5pm on 20 December 2013** the applicants must provide to the respondent a hard and electronic copy of a Scott Schedule which must contain a list of all abbreviations used and must list all the applicants complaints in each year, itemising each and every cost which is disputed in each year, and must explain concisely and clearly why it is disputed, and in respect of each complaint in each year must give the reference to any relevant documents, identified by the hearing bundle and page number at which they are to be found. The Schedule must include any representations which the applicants wish to make in relation to costs and reimbursement of fees.
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> 2. No later than **5pm on 31 January 2014** the respondent must provide to the applicants a hard and electronic copy of its response to the applicants' completed Scott Schedule.
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> 3. No later than **5pm on 17 February 2014** the applicants must provide to the respondent a hard and electronic copy of the completed Scott Schedule showing their reply to the respondent's case as set out in the Scott Schedule.
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> 4. No later than **5pm on 21 February 2014** the respondent must provide to the Tribunal four hard copies and an electronic copy of the completed Scott Schedule.

8. By an email dated 11 December 2013 Mr Everitt sought an extension of time in which to comply with the directions on the grounds of ill-health and his need to acquire another printer in Japan, where he lives. He said that he hoped to provide his version of the Scott Schedule soon after 20 December. On 7 January 2014 he emailed the Tribunal to say that he had been working on the Schedule but had not completed it. In directions which are undated but which were sent to the parties on 14 January 2014 the Tribunal directed that, unless the applicants by 5pm on 7 February produced to the landlord

their version of the Scott Schedule, the application would be struck out by virtue of rule 9(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Mr Everitt complied, at least to a substantial extent, with that order.

9. On 24 January 2014 Mr Walker asked the Tribunal for an extension of time to 4 April for the landlord to complete and serve its entries on the Scott Schedule, in view of the fact that, Mr Walker said, Mr Everitt had at that date provided only part of the information he had been ordered to provide and that the documents he had supplied were voluminous. Mr Everitt consented to the extension, which was granted, to 11 April at the request of Mr Walker.

10. The landlord's version of the Scott Schedule was lodged on 17 April and Mr Everitt's on 8 May. The documents lodged comprised a lengthy separate schedule for each of the nine years in dispute occupying, in all, 393 pages, together with a lever arch file of documents relating to costs and "evidence addenda".

11. It goes, we think, without saying that the delay between completing the evidence and the making of this decision, together with the vast volume of documents which Mr Everitt has produced and the unsystematic way in which he presented his case, have made our task very difficult. The delay was in our judgement caused entirely by Mr Everitt. The documents which he produced after the close of the hearing greatly exceeded in volume and content what we expected and were anything but helpful. They showed a lack of understanding of the fact that the end of the hearing was the last point at which evidence could be adduced or new arguments presented. They were unnecessarily prolix and detailed. We have read them, but insofar as the further material contained new evidence or new arguments we have disregarded it. Although we commend Mr Everitt for the enormous amount of time and effort he has spent on this case we fear that in doing so he may not always have discerned the wood among the trees.

The statutory framework

12. By section 27A of the Act an application may be made to the Tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A *service charge* is defined by section 18(1) of the Act as *an amount payable by the tenant of a dwelling as part of or in addition to the rent (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and, (b) the whole or part of which varies or may vary according to the relevant costs.* Relevant costs are defined by section 18(2) and (3). By section 19(1), *relevant costs shall be taken into account in determining the amount of a service charge payable for a period (a) only to the extent that they are reasonably incurred, and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard, and the amount payable shall be limited accordingly.* By section 19(2), *where a service charge is payable before the relevant costs*

are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred, any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

The lease

13. The eighth schedule to the lease sets out the leaseholder's obligations which include, at paragraph 2, to pay a share of the landlord's *expenses* calculated and payable as specified in part 1 of schedule 5. Clause 1.1.18 defines *expenses* as the *building expenses and the estate expenses.* Clause 1.1.5 provides that the *building expenses* include *the monies actually expended by or on behalf of the landlord to provide the building services (less any adjustment) and any reserve in respect of the building services.* Clause 1.1.12 similarly defines *estate expenses* to include any reserve in respect of the provision of the estate services. Clause 1.1.25 defines *reserve* as *anticipated future expenditure which the landlord decides it would be prudent to collect on account of its obligations in this lease.*

14. Part 1 of schedule 4 lists the *building services* and part 2 of schedule 4 lists the *estate expenses.* They include a wide range of services for which, subject to the reasonableness of their cost, the leaseholders are liable to contribute by way of a service charge.

15. The leaseholder's share of the expenses is defined in clause 1.1.28 as a *fair proportion* of the estate expenses and of the building expenses. The service charge accounting period is defined in paragraph 1 of schedule 5 as *the period of 12 months ending on 31 December (or another date specified by the landlord) in every year.* All tenants pay an estate service charge calculated according to floor area. The 100 leaseholders who gain access to the flats by way of one of the eight communal entrances each pay 1% of the communal costs. Bailey House and Wealden House have lifts and the leaseholders of flats in those blocks are required to pay lift costs in equal shares. With the one exception discussed below, there was no issue as to whether the charges were recoverable, subject to their reasonableness, as service charges.

The issues

16. The issues which Mr Everitt raised, in respect of all or some years, were these:

i. whether the budget or accounts for the year ended December 2006 were erroneously calculated and/or required adjustment by 365/507 of the amount charged, and whether or not this has consequences for the subsequent years' charges, and if they have been miscalculated, whether such miscalculation was deliberate;

ii. whether charges made for water have been miscalculated;

iii. the reasonableness of the charges for landscape maintenance;

iv. the reasonableness of the charges for cleaning;

v. the reasonableness of the charges for window cleaning;

vi. the accuracy of the charges for electricity;

vii. the reasonableness of the costs of general repairs and maintenance;

viii. the reasonableness of lift repairs;

ix. the costs of maintenance of fire and emergency lighting equipment;

x. the reasonableness of the costs of buildings insurance;

xi. the reasonableness of the cost of lift insurance;

xii. the reasonableness of the cost of accountancy;

xiii. the reasonableness of surveyors' fees and charges for health and safety;

xiv. the reasonableness of the fees for management;

xv. whether any reserve funds were used improperly;

xvi. the reasonableness of the cost of an equipment telephone line;

xvii. whether charges were illicitly made for car parking and the proceeds kept by the landlord or Trinity;

xviii. the reasonableness of the cost of pump maintenance;

xix. the reasonableness of the costs of insurance valuations;

xx. the reasonableness of the cost of out-of-hours calls;

xxi. the recoverability of legal costs and debt collection;

xxii. the reasonableness of the costs of maintenance of electronic gates.

17. Mr Walker also asked us whether we were prepared to indicate whether in our view the lease permits the landlord to install an up-to-date closed circuit television system the provision of which is apparently the wish of a majority of

the leaseholders. While it is our personal opinion that it does, it would not be appropriate to do more than express that personal, non-binding, view, because the matter was not raised in the application and a large number of leaseholders are not parties to the application.

18. Mr Everitt had before the hearing suggested that the leases did not permit recovery of a reserve fund, but when the provisions in the lease set out in paragraph 13 above were explained to him he readily and correctly accepted that they allowed the landlord to collect a reserve fund, and so that ceased to be an issue. He also conceded at the hearing that bank charges and the landlord's treatment of VAT in the accounts were no longer challenged. It was agreed that any adjustment to the costs should also be met by an adjustment in the chargeable VAT which in the accounts was entered separately to the charges to which it attached. In the Scott Schedule submitted after the hearing Mr Everitt abandoned his previous challenges to the cost of testing the roof mansafe system and to the amounts of bank interest credited to or debited from the service charge account. The remaining issues will be considered in the order set out above.

i. Whether the budget or accounts for the year ended December 2006 were erroneously calculated and/or required adjustment by 365/507 of the amount charged, and whether or not this has consequences for the subsequent years' charges, and if they have been miscalculated, whether such miscalculation was deliberate

19. This was the first of the two preliminary issues identified in the second pre-hearing directions. Mr Everitt chose to call the point argument 7a. His submissions on the question were at times difficult to follow but we have done our best to do justice to them. They appear to amount to this:

i. The first set of service charge accounts related to the 507 day period from 12 August 2005, when Padstone and Shire Houses came into Trinity's management, to 31 December 2006. That, Mr Everitt submitted, was not only in breach of the lease but also done deliberately in order to deceive the leaseholders by disguising the increase in service charges in the year 2007 by comparison with those for the previous 507 day period. The charges for 2007 were, he said, presented as only £13000 more than those for 2006 when they actually exceeded them by some £39,000 if the charges for the 507 day period were correctly attributed.

ii. Some costs, such as the installation of gates and initial landscaping work, which should have been borne by the developer, and other charges which were due in respect of unsold flats and which should also have been borne by the developer, had been illicitly passed to leaseholders.

iii. The leaseholders of flats in Wealden House and Bailey House were all invoiced for charges for the service charge year 2005 on the assumption that they had completed the purchases of their flats on 2 February 2006 whereas they had purchased the flats on various days in January and February. Mr

Everitt, for example, completed his purchase on 6 February. Mr Everitt accepted that the landlord had, in response to his queries, prior to the hearing adjusted his service charges to reflect the error.

20. In relation to (i) Mr Everitt submitted that the presentation of accounts covering 507 days instead of a year was deliberate and designed to mislead because it was not until a letter dated 6 June 2007, sent with the accounts for the year ended 31 December 2006, that the landlord made it plain that the accounts had been prepared to cover a 507 day period and not a calendar year. He submitted that the leaseholders of Wealden House and Bailey House had been asked to pay service charges for the period of their ownership based on the assumption that the costs incurred in a 507 day period had in fact been incurred in a 365 day period. He also submitted that it could not be assumed that the costs incurred from August 2005 to December 2006 were evenly spread over the whole period, so that the allocation of costs between different leaseholders with different periods of ownership was likely to be inaccurate and unfair. He attempted to re-calculate the service charges due from the leaseholders of flats in Padstone House and Shire House in respect of costs incurred in 2005, but he took account only of expenses for which invoices could be found and he disregarded entries in Trinity's computerised records of expenditure. He argued that, since the tenants of Padstone House and Shire House together were asked to pay 28% of the estate service charges, it must follow that 72% of the estate service charges should be referable to Bailey House and Wealden House. He said that in 2006 the leaseholders of Padstone House and Shire House were asked to pay £18,200, and so the total estate service charges for that year should have been £65,000 (28/65000 x 100) of which Bailey House and Wealden House should have paid £46,800, but in fact the charges for 2006 were £90,515. He also argued that what he considered to be flaws in the accounting for the period from August 2005 to December 2006 had increased costs in later years.

21. In relation to (ii) Mr Everitt suggested that the developer must have used water for which the leaseholders were billed but he produced no evidence that it had done so. He also said the cost of communal bins should have been met by the developers as well as that of various repairs such as to the defective automatic smoke vent.

22. Mr Purser gave evidence on this issue. He is a Fellow of the Institute of Chartered Accountants and has been a qualified chartered accountant for over 30 years. He joined Trinity in 2008 and he is the head of its accounting team which has about 20 members. He said that Trinity managed about 1000 developments, owned by many different landlords. He said that Trinity was not responsible for producing the accounts for Capulet Square; his department produced draft accounts which were passed electronically to independent auditors, Booth Ainsworth, who finalised and signed them.

23. Mr Purser said that it was usual for the period covered by service charge accounts to be specified in the accounts but he said that it was clear from the covering letter to the accounts for the initial 507 day period that they were for

507 days and not 365 days. He explained, by reference to an analysis attached to his witness statement, the way the costs for that period had been allocated to Mr Everitt. It was very clear from his analysis, which he explained in his oral evidence, that the allocation took fully into account the 507 day period covered by the accounts and the period of Mr Everitt's ownership of his flat, and that the share of service charges due from the developer in respect of unsold flats had been deducted from the amounts passed to the tenants. Having investigated the matter in the light of Mr Everitt's allegations he said that he accepted that the developer should have made a greater contribution to the costs of insurance because the insurance cover of Bailey House and Wealden House which was the subject of a service charge ran from 30 September 2005 but the handover date of those blocks was 2 February 2006. He agreed that the developer had been undercharged its share of the service charge expenditure for the insurance of Bailey House and Wealden House and that it would be fair to credit the leaseholders to that extent. (In fact a document at page 110 of the landlord's hearing file 3 suggests that those blocks were covered from 23 December 2005 and not from 30 September.) He undertook to investigate the matter further and revert to the Tribunal but it appears that he has not done so.

24. Mr Purser produced a schedule showing each flat in respect of which the developer was charged a share of the service charges. It showed that the developer was charged £1384.06 for service charges in respect of the periods between the two handover dates and the completion of sales of individual flats. He acknowledged that there were some small errors in respect of completion dates of flats in Bailey House and Wealden House which had been taken as a uniform 2 February 2006 and he said that he would rectify them, and he explained how the small error in Mr Everitt's case had been rectified. The schedule also shows, in respect of each flat, the contributions paid on completion of the purchase of the flat and the advance service charge paid by each tenant on the basis of the 2005 and 2006 budgets. Those sums differed very little from the actual costs based on the accounts later produced which demonstrates that the advance service charges were estimated with considerable accuracy.

Decision

25. We agree with Mr Everitt that there should have been separate accounts for the part year 2005 and for the full year 2006. The lease enables the landlord to choose a 12 month accounting period other than the calendar year but it does require that the period should be of 12 months. Nonetheless it was not argued, and if it had been argued we would not have accepted, that the use of a 507 day period for accounting purposes invalidated the service charge demands. We are quite satisfied that the landlord, through its agent, did not set out to deceive the leaseholders in deciding to cover in the way it did the difficult situation of a phased completion of the development overlapping more than one accounting year. The period it chose was made quite plain to the tenants when they were provided with the accounts for the end of the period and Mr Purser, whose evidence we accept, demonstrated that Trinity had done its best to apportion the costs on a reasonable basis. There were a

few accounting errors, which Mr Purser acknowledged, but we are satisfied that they were not deliberate or misleading, and none of them was significant in money terms: the discrepancy between the amounts demanded in advance on the basis of the budgets for 2005 and 2006 and the actual expenditure for the 507 day period was only £441 for the entire development.

26. We accept Mr Purser's evidence that the developer was, save in a few minor respects, required to pay, and did pay, its appropriate share of the service charges and we have no satisfactory evidence that any of the initial building costs which should have been met by the developer were passed to the leaseholders.

27. Mr Everitt's attempts to recast the accounts seemed to us to be simplistic and took into account neither the different percentages paid by different tenants nor the different levels of cost which would have been appropriate in 2005, when only part of the scheme was under management. There is force in Mr Everitt's argument that it cannot be assumed that costs were incurred at an equal rate over a period of 507 days, and there may be some unfairness between individual leaseholders arising from the approach adopted by Trinity. However we are satisfied that the accounting approach which Trinity took was not unreasonable in the circumstances and resulted in a reasonably fair apportionment as is, again, demonstrated by the small difference between the separate budget figures for 2005 and 2006 and the actual figures in the accounts. We do not accept that the use of a 507 day accounting period had any adverse consequences to the tenants in subsequent years. The actual costs for subsequent years have to be assessed on the basis of their reasonableness and not by comparison with any previous period.

28. We understand that the landlord has not provided the further information which Mr Purser said he was going to try to provide to establish the overpayment of buildings insurance in respect of the periods before the handover of Bailey House and Wealden House. We therefore, doing the best we can, have concluded that £1200 should be deducted from the cost of insurance for those two blocks, arrived at as follows: the cost of insurance of the two blocks for the period from 23 December 2005 to 30 September 2006 was £7871.41. The period to handover was just short of six weeks, suggesting an underpayment by the developer of about £1181, which we have rounded to £1200. That sum must be deducted for the amount payable for insurance by the tenants of Bailey House and Wealden House in the year 2006.

ii. Whether charges made for water have been miscalculated

29. Mr Everitt called this argument 7b. It was the second of the two preliminary points identified in the pre-hearing directions.

30. All costs are exclusive of VAT which was accounted for separately.

31. The amounts charged for water, taken from the audited accounts, were as follows:

£6856 for the 507 day period from 12 August 2005 to 31 December 2006;

£22,508 for 2007;

£17,170 for 2008;

£17,580 for 2009;

£18,821 for 2010;

£16,318 for 2011;

£20,106 for 2012;

£20,000 (estimate) for 2013.

32. Mr Everitt's main argument was that the charges for the first 507 day period and for the year 2007 were inconsistent and must be wrong. He suggested, on the basis of his attempt to re-cast the accounts because of the use of a 507 day period, that the water charges for 142 days in 2005 should be £4635, for the year 2006 they should be £12,000 and that for 2007 they should be £12,729.

33. Mr Purser said that Trinity had not been informed by the landlord that water consumption by individual tenants would be communally billed and subject to a service charge, and accordingly, in the 2006 budget, only £150 plus VAT was allowed for communal water and nothing for use by the tenants. In fact, he said, water for individual tenants' consumption has throughout been billed communally and the bills showed that the cost of water in 2006 was £14,639.52 and in 2007 it was £14,525.45. He said that the fluctuations in the amounts shown in the accounts were due to irregular billing by Thames Water and that there was some confusion in the billing for water in the early stages. He explained that a water bill for £1477.13 had been issued by Thames Water on 20 April 2006 and paid by Trinity on the landlord's behalf. Then a further bill dated 21 July 2006 for £3266.36 was issued and also paid, the period covered by two bills being 2 February 2006 to 18 July 2006. Thames Water then decided that the bills previously issued were incorrect and issued a new bill for period 2 February 2006 to 18 July 2006 in the sum of £6953.63. He said that because previous bills had been paid, Trinity decided to deduct the amount previously paid and paid the balance of £2210.13. He said that water consumption prior to 2 February 2006 was 1298 cubic metres.

Decision

34. Mr Everitt appears now to accept that the total amounts charged for water over the years in question accurately reflect total consumption over the period but he maintains, correctly, that the amounts in the accounts did not reflect usage in each year in the years prior to 2008, and he suggests that the use of the 507 period at the commencement of the operation of the development may have led to some incorrect apportionment between the four blocks. He also suggests that the developer must have used water for its own purposes for which there was no evidence that it had paid.

35. There is no evidence that the developer took its water without payment and although it would have been better if in the early years the charges had been more evenly spread, Trinity cannot be blamed for accounting for the water supply as it was charged and we are satisfied that the costs of water were reasonably incurred and, taken overall, accurately recorded.

iii. the reasonableness of the charges for landscape maintenance

36. The amounts charged for landscape maintenance were as follows:

until December 2006 (507 days):	£3779
2007:	£2781
2008:	£2959
2009:	£3497
2010:	£3363
2011:	£3363
2012:	£3739
2013 (budget)	£3900

37. Mr Everitt said that he made the same challenge in respect of each year. He did not complain about the standard of the work, apart from some litter in the courtyard, but submitted that the hourly rate, which he believed to be based on a charge of £173 per visit, was excessive and that a reasonable hourly rate would be £20. He did not accept that the gardening contractors attended 26 times a year.

38. Mr Shaw gave evidence for the landlord that there was a contract for landscape maintenance with a company called Perfect Gardens which

provided for 26 visits per year, their frequency dependent on the season. Each visit was by two gardeners who spent two hours at the development at a cost of £52.50 per visit which he considered to be good value for money. He said that the development was inspected by Trinity every 8 weeks and that the standard of landscape maintenance was good. Mr Phelps said that the gardeners picked up a certain amount of litter but that the courtyard had been used by non-residents as a short-cut until mid-June 2013, when the gates were secured, which would explain why there had been litter in the courtyard on occasions in the past.

Decision

39. We are satisfied that the charges for landscape maintenance were well within a reasonable range and Mr Everitt produced no evidence to suggest that the hourly rate was outside the norm for a reputable contractor. We accept that this cost was reasonably incurred.

iv. the reasonableness of the charges for cleaning

40. The costs of cleaning were as follows:

until December 2006 (507 days):	£8717
2007:	£8514
2008:	£9380
2009:	£9554
2010:	£9554
2011:	£9554
2012:	£9793
2013 (budget)	£11,760

41. Mr Everitt submitted that the standard and cost of providing the service had not been reasonable since March 2010 when a company called Ottimo, which was associated with Trinity, had been appointed. He submitted that the fact that Ottimo was part of Trinity showed that the contract had not been competitively tendered. He made no complaints about the standard of cleaning before about late 2010 or early 2011, but he said that all the residents agreed that standards had slipped at about that time. He said that the cleaners were supposed to attend weekly. He said that in January 2013 Mr Shaw and Mr Phelps had visited the site in response to residents' complaints and that in consequence Ottimo had been replaced by Posh Maintenance

which started cleaning the development in the third week of May 2013 (contract at page 430). He said that since Posh Maintenance started work the development was cleaner but that the lift floors were "disgusting" and there were insects in ceiling lights. He said that the standard of cleanliness had improved since 18 April 2013 when the default code on the pedestrian gate had been changed from 1111, and that the bin area was now much better. He submitted that Trinity had not shown a proactive approach to managing the estate, illustrated by its failure to change the security code, and that it would be helpful to have covered bin stores. He said that there was no service level agreement, that it was unclear who was responsible for cleaning the bin store area and that there was a slow response when bulk rubbish required removal.

42. Mr Everitt said that there was no evidence that the cleaners were doing a bad job in the early years but he considered that the charges were too high and that cleaning the common areas of the blocks should have taken no more than three or four hours a week and that the annual cost should be no more than about £3640 for weekly visits. He considered that the costs had been artificially inflated because of the accounting error in 2005/2006. In his supplementary evidence he sought to introduce an alternative quotation from FastKlean but since it was introduced after the end of the evidence and without our permission we have disregarded it.

43. Varsha Baijal, a sub-tenant of 25 and later 21 Wealden House, said in a written statement that she believed that the cleaners sometimes missed a week. Glenda Bwema, the sub-tenant of 10 Shire House and then the leaseholder of 6 Shire House, said in a written statement that the standard of security and cleanliness had gradually declined, partly because the courtyard had been easily accessible to the public from 2010 to 2013. Shehanaz Shamshuddin, the leaseholder of 1 Wealden House, gave oral evidence to the effect that the sub-tenant who occupied the flat had said that there were frequent burglaries and that mattresses and sofas left lying about. Tracey Seaman-Greenaway, a leaseholder, gave oral evidence that there were mice in her first floor flat which resulted in a loss of rent and that she had telephoned Trinity to complain but the person to whom she had spoken was dismissive. David Cotterell, Mr Everitt's sub-tenant, said in a written statement that there had been poor site security and the perimeter gates were often broken. Jordan Gaster, a subtenant of 14 Wealden House, gave oral evidence that the bin areas were always messy and smelly, with bin bags and abandoned furniture. He said he had started to notice the poor condition of the bin areas in 2012 but agreed that the cleanliness of the development improved once the rubbish was collected. He said that the car park gates had been left open hundreds of times although they were supposed to be kept locked. He believed that people left the gates open assuming that they would close automatically but they did not always do so because the magnet not strong enough. He said that groups of people used to stand drinking and smoking in the courtyard but did not now do so and that the residents' group organised by Mr Everitt had been very effective. He said that the cleaning was "OK as far as I'm aware". He said he was out from 9am to 7pm every day. Debbie Ford, the leaseholder of Flat 62, an applicant, gave oral evidence. She said that she had bought the flat when the development was first built and she visited it two or

three times a year. She said that the bin areas were a problem, that her tenants had complained of people sleeping in corridor.

44. For the landlord, Mr Phelps said that he was responsible for the day-to-day management of the estate. He said that he was not aware of much dispute about the standard of cleaning prior to 2012 but that residents then started to complain about the performance of Ottimo, and Posh Maintenance was appointed at a cost of £10,000 a year plus VAT and that there had been no complaints since then. He said that there were several factors which made cleaning difficult: the high proportion of buy-to-let flats, the behaviour of residents, and the general area of the development. He considered that cleaning twice a week would help but he doubted whether the leaseholders would pay for it. He said that an element of rental management by proxy was expected of Trinity. Cross-examined by Mr Everitt he said that two visits to Bailey House between 17 July and 7 August 2012 had been missed because the cleaners could not gain entry to the block and the landlord accordingly conceded an over-charge of £94.16 plus VAT for those two missed visits.

Decision

45. The only evidence we have that the cleaning was not worth the price paid for it related to the period from, at most, late 2010 to May 2013, an approximate period of two and a half years. There was no satisfactory evidence that the cost of cleaning was outside a reasonable range but to reflect the poor standard, acknowledged by the landlord, between late 2010 and May 2013 we deduct 10% from the cost of cleaning in 2011 and 2012 and we direct that 5% should be deducted from the actual costs of cleaning in 2013 when they are to hand in addition to the deduction of £94.16 plus VAT conceded in respect of the two missed visits in July and August 2012.

v. the reasonableness of the charges for window cleaning

46. The costs of window cleaning were as follows:

2005/2006 (507 days)	£2553
2007:	£2450
2008:	£4200
2009:	£2800
2010:	£3950
2011:	£4200
2012:	£4200

2013 (budget):	£5040

47. The leaseholders are responsible under their leases for cleaning the windows of their own flat, with the exception of 12 acoustic windows in those flats in Wealden House which face a busy road. The landlord is responsible for cleaning not only the 26 communal windows but also the 12 acoustic windows, but Mr Walker accepted that in 2010 Ottimo did not clean the acoustic windows because it had been given incorrect instructions by Trinity. He said that the landlord arranged the cleaning of the communal windows six times a year and the cleaning of the acoustic windows twice a year at a cost of £200 per visit. Since April 2013 a company called Blue Flag has cleaned the windows because of complaints about Ottimo's performance.

48. Mr Everitt did not object to the charge of £200 per visit, although he observed, correctly, that Blue Flag had previously provided a quotation equivalent of £204 per visit to include VAT. He did not accept that the windows were cleaned as often as the landlord said.

49. Mr Walker offered a 32% reduction in cost of window cleaning in 2010, 2011 and 2012 to reflect the failure to clean the 12 acoustic windows, a deduction which Mr Everitt said was inadequate.

Decision

50. We accept that £200 plus VAT per visit is within a reasonable range and that apart from the admitted failure to clean the acoustic windows the costs are within a reasonable range. We accept the landlord's concession but we are satisfied that in other respects the costs of the service were reasonably incurred and accurately recorded.

vi. the accuracy of the charges for electricity

51. The charges were (all excluding VAT at 5%):

2005/2006 (507 days)	£8108
2007:	£5963
2008:	£9000
2009:	£5151
2010:	£9367
2011:	£7112

2012:	£4612
2013 (budget):	£8400

52. All the figures were taken from a spreadsheet produced by British Gas, the supplier, covering all the schemes managed by Trinity. The invoices were produced during the hearing and Mr Everitt and some other leaseholders were able to inspect them. Having inspected them, Mr Everitt said that he did not accept the round figure of £9000 charged for 2008 and he regarded the budget figure for 2013 as too high but that in other respects he was now satisfied as to the accuracy of the charges. Mr Walker explained that the actual amount for 2008 was £9041 which was entered in the accounts as £9000.

Decision

53. We accept these charges to which, in the end, there was no serious challenge. We are satisfied that the estimated charge for 2013 was within a reasonable range.

vii. the reasonableness of the costs of general repairs and maintenance

54. The charges were:

2005/2006 (507 days):	£4480
2007:	£4927
2008:	£26,152
2009:	£6340
2010:	£5950
2011:	£17,812
2012:	£8609
2013 (budget):	£24,000

55. Mr Everitt said that the leaseholders' challenge under this head was closely related to management issues. They considered that there had been insufficient supervision of contractors and that in the earlier years sums had been spent on items, such as the costs of the entrance gates which had never worked properly, which ought to have been the developer's responsibility.

56. Mr Everitt's complaints related to a variety of matters which included an automatic opening vent which had been nailed shut, lack of security arising from broken door closers and security gates, excessive jetting of sewers and other works to unblock sewers, and works to pumps and poor maintenance of the water pumps.

57. Mr Phelps said that Trinity used a number of different contractors and were more than happy to accept nominations from residents. He did not accept that contractors had been poorly supervised or that visits from contractors had been wasted and he said that he had no reason to believe that contractors have been to the site and not done the job they were supposed to do. He agreed that an automatic opening vent had been nailed shut but he said that it should be repaired soon. He said that, of £7139.75 of the costs shown in the 2008 accounts £6920 represented the cost of repairs to the security gate in 2007 which had been sought from the insurers. The claim, he said, had been rejected initially on basis that the problems had been due to misuse and so the amount was not charged to the leaseholders until the following year.

58. The landlord conceded that £11.50 charged for light bulbs in 2005 was based on a misallocation to the development but said that all other costs appeared to be accurate and also conceded that £201 had been wrongly charged for a lift repair in 2011.

Decision

59. Mr Everitt made numerous observations, all of them summarised in the Scott Schedule. To rehearse them all in this decision would take many pages. Had the Scott Schedule been of manageable length we would have appended it to the decision, but its length is such that such a course is not practicable. The landlord's case was that all the items charged to the leaseholders were based on actual costs incurred on necessary work.

60. We are not satisfied on the evidence that any of these costs have been improperly incurred or not incurred and Mr Everitt produced no firm evidence to support his challenges. Other than the reductions, which the landlord conceded, of £11.50 for light bulbs in 2005 and £201 for a lift repair in 2011 we accept all the costs as reasonably incurred.

viii. the reasonableness of the cost of lift repairs (Bailey House and Wealden House only)

61. The charges were:

2005/2006 (507 days): £259

2007:	£738
2008:	£4307.03
2009:	£4687
2010:	£10,673
2011:	£6589
2012:	£3887
2013 (budget):	£7374

62. It was not disputed that that the lift in Bailey House was intermittently out of service from May 2007 to the end of 2007 and completely out of service from then until February 2013. It was also not disputed that the lift in 22 - 48 Wealden House started to malfunction in 2008 and that after that it was in and out of operation. From June to September 2102 it was out of operation while a speed limiter was awaited from Schindler, and it was again out of service from March to April 2013. It was conceded by the respondent that the lift in 22 - 48 Wealden House was out of service for some 40% of the time from June 2012 to June 2013. However the landlord's witnesses said that the cost, about £37,000, of the repairs to the Bailey House lift was borne by Trinity which anticipates recovering it from the developer and it will not be charged to the leaseholders. Mr Walker said that there was an ongoing dispute about liability between the developer and the electricity supplier in respect of the alleged incorrect phasing of the electricity supply. He said that the only costs passed to the leaseholders in respect of the period when the lift was out of service were for maintaining lift shafts and safety checking which were statutory requirements. Mr Walker said that the landlord largely agreed with Mr Everitt's summary of lift breakdowns, many of which it believed were due to high usage, misuse and wear and tear. Mr Phelps said that the lift of 22 - 48 Wealden House was out of order for so long because Schindler had ordered the wrong part. He said that the landlord had now changed its lift contractor from Schindler to PIP. Mr Walker said that Schindler had reimbursed Trinity with £3244.30 in recognition of its poor service and had waived a charge of £255.50 plus VAT and that all payments had been credited to the service charge account. He said that the problem with the lift in Bailey House was connected with the phasing of the electricity supply and that in the end a new supply had to be provided.

Decision

63. The evidence about the cause of the extraordinarily poor performance of the lifts is thin, and we have had to make assumptions on the basis of the agreed bare facts as to the length of time when the lifts in Bailey House and 22 - 48 Wealden House were out of service. The lift in Bailey House was completely out of service for over five years and had been unreliable for months before that. In our view it is obvious that either the landlord and/or Trinity and/or its contractors simply did not address the problems in a reasonably efficient way and it is unreasonable to expect the tenants of flats in Bailey House to pay any charges in respect of a lift service from which they received no value from late 2007 to February 2008, whether such charges were for repairs, statutory inspections, insurance, or otherwise. We are satisfied that the lift in Bailey House should have been repaired by the end of 2007 and we have concluded that no charges in respect of the lift in Bailey House for the years 2008 to 2012 inclusive should be passed to the leaseholders. We accept that maintaining lift shafts and safety checking during the period when the lift was out of service were statutory or regulatory requirements and therefore necessary but in our view the situation can be analysed (although Mr Everitt did not put the case in that way) on the basis that such costs should be set off against such remedies as the leaseholders might have against the landlord for failure to provide a lift service. For the other years under consideration, namely 2005/2006, 2007 and 2013 we are not satisfied that any of the lift repair costs or other costs associated with the lift in Bailey House were not reasonably incurred and we consider that any poor service during those period has been compensated for by the refunds from Schindler. We acknowledge that this is a broad brush approach but the landlord's evidence on the issue was sketchy and we have done the best we can.

64. The position in 22 - 48 Wealden House is not so extreme. It appears from the evidence we have that the landlord was trying, perhaps not very successfully, to address the problems with the lift and on balance we accept that it was reasonable to inspect the lifts when the lifts were out of service. Doing the best we can with inadequate evidence, and bearing in mind that the leaseholders of flats in 22 - 48 Wealden House have to some extent been compensated for the poor performance of the lift by the refunds from Schindler, we allow the costs of repairs to the lift in 22 - 48 Wealden House. It will be for the landlord or Trinity to apportion the costs in accordance with this decision.

ix. the cost of maintenance of fire and emergency lighting

65. The charges were:

2005/2006 (507 days):	£188
2007:	£1728

2008:	£3341
2009:	£5000
2010:	£3762
2011:	£7593
2012:	£4444
2013 (budget):	£5778

66. Mr Everitt's case was that there was no emergency lighting system but Mr Phelps said that some of the lights on the staircases of the blocks have emergency lights built into them which are activated if there is a power failure and we were shown them at out inspection. He then said that the cost was excessive but provided no evidence to support that case. Mr Phelps said that the maintenance of the system is carried out under contract with Cirrus and that every time he visited the development he inspected the emergency lighting.

Decision

67. Although the landlord did not provide invoices or receipts to support all the charges it established that there are contracts for the maintenance of the emergency lighting system and fire alarms and for the maintenance of the automatic opening vents and that payments have to be made for additional repairs to the system. We accept that Trinity's accounting system was robust and we accept that the charges were accurately accounted for. We accept that these costs were incurred and have no material upon which we could conclude that these costs are not reasonable.

x. the reasonableness of the costs of buildings insurance

68. The charges were:

2005/2006 (507 days):	£16,495
2007:	£13,183
2008:	£15,606
2009:	£11,203
2010:	£17,340

2011:	£13,314
2012:	£14,080
2013 (budget):	£15,260

69. Mr Everitt did not challenge the cost of insurance in 2012 and 2013. In other years he did not challenge the choice of insurer, nor did he say that the premiums were higher than the norm but suggested that the actual premiums paid were lower than the amounts recorded in the accounts and he suggested that public liability insurance was unnecessary. In other respect he did not challenge the quality or extent of the cover although he was "suspicious" about a claim in respect of a flood in the tank room in 2009. In some years he made, in the Scott Schedule submitted after the hearing, "corrected challenges" which he had not advanced at the hearing.

Decision

70. We are satisfied that the cost of insurance premiums was well within reasonable limits throughout the period and we are satisfied that public liability insurance was necessary. We are satisfied that the premiums were correctly recorded in the accounts and that the discrepancies between the amounts in the accounts and the amounts invoiced by the insurer are due entirely to the fact that the insurance years and the service charge years are not coterminous.

xi. lift insurance and inspections

71. The charges were:

2007:	£1155
2008:	£1050
2009:	£490
2010:	£490
2011:	£978
2012:	£1188
2013 (budget):	£1747

72. Mr Everitt complained that he had not been provided with any documents to support the cost of lift insurance and submitted that the leaseholders

should not have to pay any costs in respect of a lift service which for long periods they had not received. He said that no claims had been made on the lift insurance policy which had been a waste of money and had provided no value to the leaseholders.

73. Following the same reasoning as we have used in respect of lift repairs we have concluded that the leaseholders of flats in Bailey House should pay no charges under this head for the years 2008 to 2012 inclusive but that in other respects these charges are recoverable in full.

xii. the reasonableness of the cost of accountancy

74. The charges were:

2005/2007 (507 days):	£650
2008:	£600
2009:	£600
2010:	£600
2011:	£600
2012:	£550
2013 (budget):	£650

75. Mr Everitt said that he would not have challenged these fees if the accounts had been properly prepared but submitted that the accountants' failure to identify on each page the period to which the accounts related rendered their service valueless and that in all years the accountants had simply "rubber-stamped" the work of Trinity's accounting department. Mr Walker submitted that the fees were reasonable for certifying the accounts and taking responsibility for them.

76. We are satisfied that the accountancy fees for certifying the accounts were within a reasonable range and we do not regard the use of a 507 day accounting period at the outset as a sufficient reason to disallow any of these fees.

xiii. the reasonableness of surveyors' fees charged in 2006, 2007 and 2008 (in the accounts re-titled "health and safety" in subsequent years)

77. At the hearing Mr Everitt accepted that a fee of £450 paid for a valuation for Berkeley Homes which had been wrongly charged in 2006 had been credited to the service charge account in 2007. The only other charge of this nature which he challenged was a charge of £650 in 2008 for a surveyor's report relating to health and safety which had not been disclosed to the leaseholders. The landlord said that the inspection had been undertaken but the report could not be found, although in the Scott Schedule provided after the hearing it was said that the report had now been found and could be produced if required. Mr Everitt did not ask for the report to be provided to him because he said it had been provided too late.

78. Notwithstanding that we have not seen the report we accept that it was given and we allow this fee as reasonably incurred.

xiv. the reasonableness of the fees for management;

79. The charges were:

2005/2007 (507 days):	£16,532
2008:	£17,456
2009:	£19,200
2010:	£19,712
2011:	£20,532
2012:	£21,560
2013 (budget):	£21,560

80. Mr Everitt said that the standard of management had been poor until this application was made although he accepted that Mr Phelps was now doing a reasonable job; and when Hilary Quinn said on behalf of Fairhold Artemis on the fourth day of the hearing that Fairhold Artemis had given Trinity six months' notice and proposed to replace Trinity with a new managing agent Mr Everitt said that that would be unnecessary because Trinity had "much improved".

81. In respect of earlier years Mr Everitt and his witnesses complained particularly of poor supervision of work-people, failure to change the code on the security gate from default 1111 which allowed trespassers to enter the development, a lack of competitive tendering, slow resolution of problems (Mr Gaster, for example, said that in mid-June 2012 he came home from holiday and found a window smashed; he reported it to Trinity more than once and then it was boarded up and not repaired for months; and Ms Biajal said that

from May 2012 the block front door self-closer did not work and that Trinity took months to carry out the necessary repairs), poor window cleaning, the refusal to install monitored closed circuit television, attempts to pass to leaseholders costs which should have been met by the developer, and poor an inaccurate budgeting. He submitted that the costs of management in 2006 and 2007 should be reduced by 10% for poor accounting and by a further 10% for lack of supervision and irregular site visits. In subsequent years he sought very substantial deductions. For example for the year 2012 he suggested a 125% reduction to a minus figure.

82. Mr Mushtaq who is a director of Kilmer's, the letting agent which manages 28 of the flats, said that he had been involved with the management of the flats since 2006. He said that his company took care in selecting sub-tenants, that all references were checked by an independent company, and the sub-tenants were mostly professional people who worked in Canary Wharf. He said he worked closely with Trinity who had not advised him of any problems with the behaviour of sub-tenants. He said that he visited the development up to three times a week and he had frequently arranged for the local authority to remove bulk rubbish. He said that he had heard of a number of burglaries on the development and that there was a security problem because the flat doors were flimsy and external doors were slow to close and that the police had advised the fitting of CCTV. He said that there were issues with the lift and with the issue of keys. His general view was that the management could have been better, particular with regard to security and response to complaints and problems. He said that he had recommended Posh Maintenance to replace Ottimo.

83. Mr Phelps gave evidence that he visited at least every eight weeks, that he frequently arranged for the disposal of bulk rubbish, and that to some extent Trinity was expected to act as managers of some of the sub-let flats. He said that Trinity did not distinguish between leaseholders and sub-tenants in their dealings with the complaints of occupiers.

Decision

84. At our inspection we saw a well-kept, well-managed estate, but the evidence suggested that, although in the early years the standard of management had been reasonable, for about two years before the application to the Tribunal the management was below the standard which the leaseholders were reasonably entitled to expect. Since the application, clearly a great deal of effort has been put in to raise the standard of management and we accept that the standard has been adequate since early 2013. We bear in mind that the fees were, particularly in the early years, extremely modest (for example, in 2007 they were less than £160 per flat, excluding VAT, and even on the basis of the budget for 2013 the management fee is still low) and that an estate with a very high proportion of sub-lettings does present management difficulties, particularly in respect of the disposal of rubbish such as discarded furniture on changes of tenant. Our impression was that the development is in an area in which security is very important but difficult to

maintain and that the current staff who gave evidence appeared to us to be competent capable managers. To reflect the fall-off in the standard of management in the years 2011 and 2012 we disallow 10% of the cost of management, including VAT, for those two years. In other respects we allow the management fees in full.

xv. use of reserve funds

85. The landlord sought to collect as a reserve £12,730 for the 507 day period to December 2006 and the same for the year 2007, and £13,000 each year thereafter. The amounts collected were split equally between what Trinity called "the sinking fund" and the "redecoration fund". As at 31 December 2012 the balance in the sinking fund was £25,766 and balance in the redecoration fund was £18,760. The accounts for each year show the total amounts taken from the funds but do not specify the uses to which they were put, as to which we were given very little information. Mr Everitt, however, had managed to piece together the uses to which the funds were put and he challenged some of the expenditure.

86. For the year ended December 2006 he challenged £2580 which was apparently, although the invoice could not be traced, the cost of supplying 12 waste bins which he contended should have been paid for by the developer. He also said that the amount had been included in the budget for general repairs and maintenance. The landlord said that the bins were purchased for general use and that the cost was taken from the sinking fund because insufficient allowance had been made for them in the budget.

87. For the years 2007 and beyond Mr Everitt made, with one exception, no challenge to the expenditure out of the sinking and redecoration fund until after the end of the hearing which we regard as too late. The exception was the expenditure in 2009 of £24,517 on the redecoration of the internal common parts of all the blocks, expenditure the purpose of which would not have been apparent from the accounts. Trinity produced the section 20 notices which it issued in respect of the works and a certificate showing that the work had been completed, signed off by one of their staff.

88. Mr Khaled said that he had no recollection of any redecoration being carried out and he believed he would have remembered it if it had been carried out. Mr Everitt said, however, that he did not dispute that some redecoration was carried out but suggested that it was not the full, two-coat, complete redecoration which had been consulted upon but an inadequate and incomplete job. After the hearing he sought to adduce some written evidence from Ms Bwema to the effect that the standard of the redecoration was very poor but we have disregarded that evidence because it was provided too late to be tested.

Decision

89. As for the waste bins, we accept the landlord's evidence but we are concerned that the expenditure out of the sinking fund has not been clearly and transparently recorded. In respect of the redecoration it is clear that the landlord consulted the leaseholders under the statutory consultation procedures and that the work was signed off as completed. We do not have satisfactory evidence that the work was carried out to an unsatisfactory standard or that leaseholders complained of its standard at the time the work was done. We are not prepared to make an arbitrary adjustment to the cost on the basis of the evidence put before us at the proper time and it was not possible to judge from our inspection whether the redecoration carried out some four years earlier was to a satisfactory standard. We thus allow these costs although they should have been properly listed in the service charge accounts and not merely recorded as a deduction from the sinking or redecoration funds.

xvi. the reasonableness of the cost of an equipment telephone line;

90. The costs were:

2005/2006 (507 days):	nil
2007:	£1987
2008:	£2057
2009:	£2232
2010:	£2424
2011:	£2608
2012:	£2627
2013 (budget):	£3456

91. This charge is for telephone line rental for the three lift emergency telephone lines. Mr Everitt withdrew his previous challenges to these charges with the exception of the budgeted figure for 2013. The landlord said that the budget was based on a reasonable uplift on previous costs. We accept that.

xvii. whether charges were illicitly made for car parking and the proceeds kept by the landlord or Trinity

92. Mr Everitt challenged a charge of £160 for parking enforcement on the ground that it would not have been necessary if the gate security had been properly operational but the landlord said that occasional parking enforcement was still occasionally required. We accept that.

xviii. the reasonableness of the cost of pump maintenance

93. The charges were:

2005/2006 (507 days):	nil
2007:	£352
2008:	£1142
2009:	£2614
2010:	£474
2011:	£662
2012:	£543
2013 (budget):	£1206

94. Mr Everitt's complaint was that insufficient was spent on water pump maintenance and that as a result the pumps failed in 2008, 2009 and again in 2011. He said that the pumps must have been of poor quality in the first place and/or had been badly maintained, although he accepted that some maintenance had been carried out for which there was an invoice in 2008. Mr Walker said that the pumps had been replaced in October 2011 after a serious leak, the costs of replacement having possibly come from the sinking fund.

Decision

95. There is insufficient evidence to establish a case of historic neglect as a set-off against these charges and we do not have the material to reject them.

xix. insurance valuation

96. There is a charge of £2983 in the 2009 accounts to Cunningham Lindsay, chartered loss adjusters, for an insurance valuation of the development. Then there were further charges of £1000 in the 2010 accounts and of £380 in 2011 and £400 in 2012. Mr Walker said that the landlord had decided to set aside in a reserve each year a sum towards the cost of insurance valuations to soften the blow to leaseholders. Mr Everitt objected to the principle of collecting

money from the leaseholders in this way and challenged the charge in the years 2010.

Decision

97. The lease permits the landlord to collect a reserve for *anticipated future expenditure which the landlord decides it would be prudent to collect on account of its obligations in this lease.* We accept that the landlord was entitled to collect a reserve for insurance valuations in order to spread the cost and accept these charges.

xx. out of hours

98. Charges of £55 in October 2010, £333 in 2011 and 2012 were paid, and a budgeted figure of £399 allowed for 2013, in respect of payments to a property specialist call handling company which Trinity appointed in October 2010 to answer calls made by residents out of normal office hours. Mr Everitt said that in previous years Trinity absorbed the cost as part of its normal management and he considered that it should do so in all years. He also complained that the initial charge had increased so substantially. He asked why there were no invoices or other proof of the use of an independent company.

Decision

99. Bearing in mind the low level of the management fees we on balance regard the cost as justified and reasonable in amount.

xxi. irrecoverable legal costs and debt collection

100. In 2010 there is a charge in the accounts of £2132 for "irrecoverable legal costs", in 2011 there is a charge of £101 for "debt collection", and in 2012 there is a charge of £310 for "debt collection costs". The landlord submitted that legal costs and other expenses arising from individual leaseholders' failures to pay service charges could, if not recovered from the leaseholders concerned, be recovered from the leaseholders generally as a service charge. Mr Everitt said that it was not reasonable for costs attributable to defaulting leaseholders to be spread among service charge payers generally.

101. Mr Walker relied on part 1 of schedule 6 to the lease which, at paragraph 13.3, obliges the tenant to pay *all costs incurred by the landlord in respect of the breach of any of the tenant's obligations contained in this lease.*

Decision

102. As thus put by the landlord the argument is misconceived because part 1 of schedule 6 is concerned with the individual obligations of the leaseholder and not with costs recoverable as a service charge. However, such costs would in our view be incidental to *taking or defending any proceedings relating to the building services the building expenses and the obligations of the tenants of the dwellings in relation to the building* which are recoverable as a service charge under paragraph 10 of part 1 of schedule 4 to the lease. In our view, provided the landlord has taken all reasonable steps to recover the costs of debt collection from the defaulting leaseholders, any costs it cannot recover from them may be recovered as a service charge. There was no evidence on this subject at the hearing and we consider that, on the balance of probabilities, the landlord did in the first place seek to recover its costs in full from the defaulting leaseholder. We therefore allow this charge.

xxii. electronic gate maintenance

103. From 2012 the landlord has shown separately in the accounts a charge for this item which was formerly included within general repairs and maintenance. The charge was £5673 in 2012 and the budget figure for 2013 is £1134. Mr Everitt challenged the cost in 2012 but not the budgeted figure. In relation to 2012 Mr Everitt did not dispute that the cost had been incurred but submitted that the need for constant works to the gates stemmed from Trinity's failure to keep the site properly secure. The landlord's case is that the costs were incurred and necessarily and reasonably so.

Decision

104. There is insufficient evidence to support a set-off in respect of historic neglect and we allow this charge.

General

105. While we would normally wish, if we could, to determine the final costs which the tenants are liable, by virtue of the determination, to pay, the uncertainties relating to VAT and lift costs are such that it is not possible for us to do so in this case.

Judge: Margaret Wilson

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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	LON/00BG/LSC/2013/0014
Property:	Capulet Square, Bromley-by-Bow, London E3
Applicants:	Stephen Everitt and others
Representative:	Stephen Everitt
Respondent:	Fairhold Artemis Limited
Representative:	Trinity (Estates) Management Limited
Type of application:	Liability to pay service charges
Date of hearing:	19, 20 and 21 August and 14 and 15 November 2013
Appearances:	Stephen Everitt, leaseholder, representing all the applicants Samuel Walker, solicitor, Trinity (Estates) Management Limited
Tribunal members:	Margaret Wilson P M Casey MRICS Rosemary Turner JP
Date of decision as to costs:	6 August 2014

DECISION AS TO COSTS

1. Our decision on an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the applicant leaseholders' liability to pay service charges to the landlord, Fairhold Artemis Limited, from August 2005 to date is issued separately. It was agreed at the hearing of the application that all questions relating to costs would be dealt with by means of written representations, and such representations, which occupied a bulky lever arch file, were duly submitted after the conclusion of the hearing.

2. Much of the file was based on Mr Everitt's misconception that the Tribunal has a general power to award costs. That is not the case. The Tribunal's only relevant power to award costs is contained in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which provides that the Tribunal may make an order for costs (a power which is in any event very limited in respect of proceedings begun, as here, before the Rules came into force) only *if a person has acted unreasonably in bringing, defending or conducting proceedings.* The landlord has certainly not so behaved in the present case and no question therefore arises of making any order for costs against it. There is power under rule 13(2) to order the reimbursement of any fees paid in respect of the hearing or application, but in the exercise of our discretion we decline to make such an order in this case because, although Mr Everitt and those whom he represents have enjoyed a limited measure of success in the proceedings, looked at overall they have generally failed to substantiate the majority of their allegations and the disproportionate way in which the case has been conducted has put the landlord to unnecessary expense and has occupied a wholly unnecessary amount of time, as we have explained in our decision on the substantive application.

3. Mr Everitt also asks for an order under section 20C of the Act to prevent the landlord from placing any of its costs in respect of the proceedings on any service charge. The landlord resists such an application on the grounds that the time and expense it has been required to invest in this case was out of all proportion to the true complexity of the issues. We accept that. While in other circumstances we might well have said that, since the applicants have, albeit to a very limited extent, been successful, a limited order under section 20C might have been appropriate, the fact that they have entrusted the presentation of their case to Mr Everitt who has in our judgement rendered what should have been a fairly straightforward case into a hearing of wholly unnecessary length, and who has submerged the case in an inordinate quantity of largely unnecessary paper and has made a very large number of mainly spurious allegations against the landlord, has led us to the conclusion that none of the applicants should have the benefit of an order under section 20C. That decision

applies only to the applicants and in our judgement it does not prevent leaseholders who are not applicants from applying for such an order if they consider it appropriate, although this decision should not be read as encouragement to them to do so.

Judge: Margaret Wilson

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